STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7629

Investigation into City of Burlington Electric Department's proposed Energy Resource Tariff Rider tariff, filed to take effect on a service-rendered basis as of July 10, 2010	))))

Order entered: 9/8/2011

I. INTRODUCTION

In this proposal for decision, I recommend that the Vermont Public Service Board ("Board") deny the petition for approval of the proposed Renewable Energy Resource Tariff Rider filed by the City of Burlington Electric Department ("BED").

II. BACKGROUND

On May 26, 2010, BED filed a petition with the Board for approval of a proposed Renewable Energy Resource Tariff Rider, to take effect on a service-rendered basis as of July 10, 2010 (Tariff Filing No. 8159) (the "Proposed Tariff"). The Proposed Tariff would be optional for all BED customers taking service under a normally applicable retail tariff that have received a net metering certificate of public good ("CPG") for certain types of renewable energy generation sources.

On June 29, 2010, the Vermont Department of Public Service ("Department") filed a letter with the Board stating concerns regarding the Proposed Tariff's compliance with the Board's net metering rules and recommending that the Board suspend and investigate the tariff.

On July 2, 2010, the Board issued an Order suspending the Proposed Tariff and opening an investigation (Docket No. 7629).

On July 12, 2010, I convened a prehearing conference in this matter. The prehearing conference was attended by the Department and BED.

On July 20, 2010, I conducted a workshop to discuss concerns raised by the proposed tariff. The workshop was attended by the Department, BED and representatives from Green Mountain Power Corporation.

On September 2, 2010, I convened a status conference, via telephone, in which the Department and BED participated.

On September 17, 2010, BED, in response to issues raised at the prehearing conference and workshop, filed an amended petition for approval of a modified version of the proposed tariff.

On October 21, 2010, the Department filed a letter with the Board recommending that the tariff, as amended, be approved without further investigation or hearing.

On October 29, 2010, the Deputy Clerk of the Board issued a memorandum stating that based on the information contained in the parties' submissions to date and the information presented at the prehearing conference, the Hearing Officer had determined that a decision in this matter could be rendered without evidentiary hearings. The memorandum described the Hearing Officer's proposal that, in lieu of an evidentiary hearing, all of the parties' filings and the prehearing conference transcript be included in the evidentiary record. Further, the memorandum established a deadline of November 5, 2010, for parties to file any objections or requests for exclusion with the Board.

On November 5, 2010, the Department filed a letter with the Board stating that it does not object to the approach outlined in the October 29 memorandum.

No other comments in response to the October 29 memorandum have been filed with the Board.

III. Findings

Based upon the evidence of record, including the application and its accompanying documents, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

1. BED's Proposed Tariff would allow customers that apply for and receive a net metering CPG for a photovoltaic generation facility to enter into a contract with BED to sell the energy generated by that facility to BED. Tariff at 1.

2. Under the Proposed Tariff, when the generation facility produces less electricity than that consumed by the customer during the billing cycle, BED will pay the customer a certain amount per kWh produced based on the customer's rate class. These payments would be in

addition to any kWh credits that would normally apply to a net-metered project. The additional payment amounts range from $0.003719 per kWh for a Small General rate class customer to $0.054757 for a Large General rate class customer. Tariff at 1-2.

3. Pursuant to the Proposed Tariff, when the generation facility produces more electricity than that consumed by the customer during the billing cycle, BED will pay the customer for such excess energy at the then-current Small General rate class rate plus $0.003719 per kWh. Tariff at 2.

4. The Proposed Tariff provides that payments can be carried forward as bill credits on the customer's bill for an indefinite period. However, if the value of the credit to be carried forward to the next billing period equals or exceeds $100.00, the customer may request that BED pay the customer the value of the credit. In addition, BED may elect at any time to pay the customer the value of any bill credit. Tariff at 2.

IV. Discussion & Conclusion

The net metering program is authorized by 30 V.S.A. § 219a. That statute defines net metering as "measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer's billing period . . . ." 30 V.S.A. § 219a(2); *see also* Board Rule 5.102(G).

The statute establishes the following requirements (among others), with regard to the electric energy measurement for net metering systems:

> (1) The electric company which serves the net metering customer shall measure the net electricity produced or consumed during a billing period, in accordance with normal metering practices.
> (2) If the electricity supplied by the electric company exceeds the electricity generated by the customer and fed back to the electric distribution system during the billing period, the customer shall be billed for the net electricity supplied by the electric company in accordance with normal metering practices.
> (3) If electricity generated by the customer or group exceeds the electricity supplied by the electric company:
> (A) The customer or group shall be billed for the appropriate charges for that month, in accordance with subsection (b) of this section;
> (B) The customer or group shall be credited for the excess kilowatt-hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period; and
> (4) Any accumulated kilowatt-hour credits shall be used within 12 months, or shall revert to the electric company, without any compensation to the customer.

30 V.S.A. § 219a(e).[1]

The terms of BED's Proposed Tariff are not consistent with these statutory requirements for net metering. The statute requires that any excess energy produced by a net metering facility result only in a kWh credit on the customer's next bill. These kWh credits have no monetary value and can be carried forward only as bill credits for a period of 12 months before they revert to the utility without any compensation to the customer. The power is to be used to offset the customer's usage, with no sale of power to the utility in a net metering arrangement. Under the terms of BED's Proposed Tariff, all of the energy produced by a facility would be separately metered and the customer would receive monetary credits for this generation based upon customer class. These monetary credits could then be carried forward on the customer's bill indefinitely, or the customer could request payment when the monetary value of the credits reaches $100.00. What is characterized by BED as a net metering tariff is, essentially, a standard contract offer allowing for the purchase of power from small renewable generation sources. The energy measurement and payment arrangement in BED's Proposed Tariff does not comply with the net metering measurement and credit provisions set forth in 30 V.S.A. § 219a(e) and Board Rule 5.104, and cannot be approved as a net metering tariff.[2]

However, this does not preclude BED from entering into contractual arrangements to purchase power from renewable generation sources. Pursuant to Board Rule 5.106(C):

> Notwithstanding the provisions of section 5.104, an electric company may contract to purchase all or a portion of the output products from a net metering system, provided:
> 1. The system obtains a certificate of public good pursuant to section 5.109.
> 2. Any contracted power shall be subject to the limitations set forth in subsection 5.106 (A)1.
> 3. Any contract shall be subject to interconnection and metering requirements in subsection 5.106 (A) and section 5.111.
> 4. Any contract may permit all or a portion of the tradeable renewable energy credits for which the system is eligible to be transferred to the electric company.

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1. These same requirements are set forth in Board Rule 5.104(A).

2. An incentive in the form of an additional bill credit tied to the facility's net excess energy production and without additional monetary value, such as described in Green Mountain Power Corporation's net metering tariff, would be permissible under the net metering energy measurement requirements of the statute and rule. *See* Tariff No. 284, revised May 15, 2008.

As BED contends, this section of the rule "implies that utilities may enter into arrangements with systems that qualify as net metered systems, without the specific utility purchase mechanism itself meeting all of the net metering requirements."[3] In accordance with this section of the rule, BED may elect to enter into contracts with individual net metering customers, under the contractual terms and conditions that are set forth in its Proposed Tariff. The individual contracts, like other in-state wholesale power purchase contracts entered into by BED, would not require Board approval.[4] Instead, the terms of such wholesale power purchases would appear to fall under the jurisdiction of the Federal Energy Regulatory Commission and, in any event, do not belong in BED's retail tariff.[5]

For the reasons set forth above, I recommend that the Board deny BED's request for approval of the Proposed Tariff.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 3rd day of December, 2010.

s/Gregg Faber
Gregg Faber
Hearing Officer

3. Letter from BED to the Board, dated June 16, 2010, at 1.

4. However, the net metering certificates of public good issued to the customers that subsequently enter into this contractual arrangement would need to be amended by the Board to reflect the contractual arrangement that would be replacing the previously approved net metering arrangement. In addition, the Board would likely require additional information regarding the economic benefit produced by these projects, which would now be engaged in the sale of energy, in order to approve these amendments. Pursuant to Board Rule 5.107, the Board has conditionally waived many of the requirements of 30 V.S.A. § 248(b), including § 248(b)(4) (economic benefit to the state), because they do not typically apply to net-metered systems. However, in cases where the customer is now engaging in the direct sale of power to the utility, the economics of the project would change such that further review under § 248(b)(4) may be necessary. There may also be other issues that these customers would need to address, such as possible federal and state income tax implications related to the sale of power from these generation facilities.

5. *See* 16 U.S.C. 824(b); *see, e.g., Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 371 (1988).

V. Board Discussion

On January 7, 2011, the Board held an oral argument in this proceeding attended by BED and the Department. Following the oral argument, on March 30, 2011, BED filed a brief in response to questions posed by the Board at the oral argument.

On April 26, 2011, the Board issued a memorandum requesting additional information regarding BED's brief.

On June 23, 2011, BED filed a response to the memorandum and also filed a request that the Board approve its proposed Renewable Energy Resource Tariff Rider based upon recent statutory changes to 30 V.S.A. § 219a, pursuant to Act No. 47.[6]

On August 19, 2011, the Department filed a letter with the Board recommending that the tariff be approved by the Board.

We conclude that in light of the statutory change, we should approve BED's proposed tariff. Act No. 47 modified the provisions of 30 V.S.A. 219a to include § 219a(h)(1)(J)which provides that an electric company:

> [m]ay in its rate schedules offer credits or other incentives that may include monetary payments to net metering customers. These credits or incentives shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

Act No. 47's statutory revisions to 219a followed the issuance of the Hearing Officer's proposal for decision. The new statutory language clearly authorizes BED's proposed tariff and, therefore, we approve the tariff pursuant to § 219a(h)(1)(J).

VI. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The City of Burlington Electric Department's ("BED") proposed Renewable Energy Resource Tariff Rider, as amended, is approved to take effect on a service-rendered basis as of September 15, 2011.

2. BED shall file a revised tariff that reflects the September 15, 2011, effective date by September 14, 2011.

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6. Public Act No. 47 (2011 Vt., Biennial Session).

3. As a result of statutory revisions, the Hearing Officer's proposed conclusions and recommendations are moot.

DATED at Montpelier, Vermont, this 8th day of September, 2011.

s/James Volz	)	PUBLIC SERVICE
s/David C. Coen	)	BOARD
s/John D. Burke	)	OF VERMONT

OFFICE OF THE CLERK

Filed: September 8, 2011

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.